

1 JOHN McBRIDE, ESQ., SBN 36458  
2 CHRISTOPHER E. PLATTEN, ESQ., SBN 111971  
3 Wylie, McBride, Platten & Renner  
4 2125 Canoas Garden Avenue Suite 120  
5 San Jose, CA 95125  
6 Telephone: 408.979.2920  
7 Facsimile: 408.979.2934  
8 [jmcbride@wmpirlaw.com](mailto:jmcbride@wmpirlaw.com)  
9 [cplatten@wmpirlaw.com](mailto:cplatten@wmpirlaw.com)

10 Attorneys for Plaintiffs and Cross-Defendants Robert Sapien,  
11 Mary Kathleen McCarthy, Than Ho, Randy Sekany,  
12 Ken Heredia, Teresa Harris, Jon Reger, Moses Serrano,  
13 John Mukhar, Dale Dapp, James Atkins, William Buffington  
14 and Kirk Pennington

15  
16 **IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
17 **IN AND FOR THE COUNTY OF SANTA CLARA**  
18

19 SAN JOSE POLICE OFFICERS' ASSOCIATION,

20 Plaintiff,

21 v.

22 CITY OF SAN JOSE AND BOARD OF  
23 ADMINISTRATION FOR THE POLICE AND FIRE  
24 DEPARTMENT RETIREMENT PLAN OF CITY OF  
25 SAN JOSE,

26 Defendants.

27 AND RELATED CROSS-COMPLAINT  
28 AND CONSOLIDATED ACTIONS

Case No. 1-12-CV-225926

(and Consolidated Actions 1-12-CV-  
225928, 1-12-CV-226570, 1-12-CV-  
226574, and 1-12-CV-227864)

**OBJECTIONS TO ALEX GURZA'S  
DECLARATION IN SUPPORT OF  
MOTION FOR SUMMARY  
ADJUDICATION OF ISSUES**

**Date:** June 7, 2013  
**Time:** 9:00 a.m.  
**Dept:** 2  
**Judge:** Hon. Patricia M. Lucas

**Trial Date:** July 22, 2013

**Objection Number 1**

"Retirees are not represented by any City labor union." (Gurza Declaration, page 3,  
line 10.)

\\

1           **Grounds for Objection 1:** Lack of foundation, lack of personal knowledge (Evid.  
2 Code, §702(a)), sets forth a conclusion rather than admissible evidence. (C.C.P. §437c(d)  
3 (See *Sesma v. Cueto* (1982) 129 Cal.App.3d 113.)

4           **Court's Ruling on Objection 1:**

5 Sustained: \_\_\_\_\_

6 Overruled: \_\_\_\_\_

7                           **Objection Number 2**

8  
9           "Beginning in 2009, the City's contributions for retiree pensions began to  
10 dramatically increase and create significant deficits in the City budget. In September 2010,  
11 the City's Auditor released a report entitled 'Pension Sustainability: Rising Pension Costs  
12 Threaten The City's Ability To Maintain Service Levels – Alternatives For A Sustainable  
13 Future.' The Auditor's Report contained a number of recommendations to reform the City's  
14 retirement systems and decrease costs." (Gurza Declaration, page 4, lines 9-14.)

15           **Grounds for Objection 2:** Irrelevant. (Evid. Code, §§210, 350-351).

16           **Court's Ruling on Objection 2:**

17 Sustained: \_\_\_\_\_

18 Overruled: \_\_\_\_\_

19                           **Objection Number 3**

20  
21           "In 2011, the City began to meet and confer with City unions over plans to amend  
22 the City Charter to reform the City's retirement systems. Under the requirements of *Seal*  
23 *Beach Police Officers' Assn. v. City of Seal Beach*, 36 Cal.3d 591 (1984), the City met and  
24 conferred for over a year but ultimately did not reach any consensus with unions over  
25 retirement reform measures." (Gurza Declaration, page 4, lines 18-22.)

26  
27           **Grounds for Objection 3:** Lack of foundation, lack of personal knowledge (Evid.  
28 Code, §702(a)), contains a legal conclusion "under the requirements of *Seal Beach*, etc."

Also is conclusionary and fails to meet the requirements of C.C.P. §437c(d). (See *Sesma, supra.*)

**Court's Ruling on Objection 3:**

Sustained: \_\_\_\_\_

Overruled: \_\_\_\_\_

**Objection Number 4**

"As stated above, in 2009, the City faced significantly increased retirement contributions towards employee pension benefits and a large deficit caused in large part by the increased contributions." (Gurza Declaration, page 5, lines 18-20.)

**Grounds for Objection 4:** Irrelevant. (Evid. Code, §§210, 350-351); Lack of personal knowledge (Evid. Code §702(a)), is conclusionary and does not meet the requirements of C.C.P. §437c(d). (See *Sesma, supra.*)

**Court's Ruling on Objection 4:**

Sustained: \_\_\_\_\_

Overruled: \_\_\_\_\_

**Objection Number 5**

"SJPOA and the IAFF also offered proposals to achieve compensation reduction via employees making an 'additional' pension contribution to defray the City's required pension contributions." (Gurza Declaration, page 6, lines 2-4.)

**Grounds for Objection 5:** Lack of foundation, lack of personal knowledge (Evid. Code, §702(a)), is conclusionary and does not meet with requirements of C.C.P. §437c(d). (See *Sesma, supra.*)

**Court's Ruling on Objection 5:**

Sustained: \_\_\_\_\_

Overruled: \_\_\_\_\_

### Objection Number 6

"Thus, the Unions took the position that the employees could pay the entire pension contribution required for the unfunded liabilities." (Gurza Declaration, page 7, lines 8-9.)

**Grounds for Objection 6:** Lack of foundation, lack of personal knowledge (Evid. Code, §702(a)), speculative and does not meet with the requirements of C.C.P. §437c(d). (See *Sesma, supra.*)

#### Court's Ruling on Objection 6:

Sustained: \_\_\_\_\_

Overruled: \_\_\_\_\_

### Objection Number 7

"During negotiations over compensation, the City and its employee unions have treated increased employee pension contribution rates as interchangeable with wage decreases." (Gurza Declaration, page 10, lines 20-21.)

**Grounds for Objection 7:** Lack of foundation, lack of personal knowledge (Evid. Code, §702(a)), speculative and does not meet the requirements of C.C.P. §437c(d). (See *Sesma, supra.*)

#### Court's Ruling on Objection 7:

Sustained: \_\_\_\_\_

Overruled: \_\_\_\_\_

### Objection Number 8

"In the memoranda to the City Council, the City Manager recommended a suspension of SRBR distributions due to 'the plans' significant unfunded liabilities." (Gurza Declaration, page 15, lines 8-9.)

**Grounds for Objection 8:** Irrelevant. (Evid. Code, §§210, 350-351).

**Court's Ruling on Objection 8:**

Sustained: \_\_\_\_\_

Overruled: \_\_\_\_\_

**Objection Number 9**

"In 2011, a number of City unions either made proposals or entered into tentative agreements for the elimination of the SRBR in part or in whole." (Gurza Declaration, page 15, lines 17-18.)

**Grounds for Objection 9:** Irrelevant, (Evid. Code, §§210, 350-351), is conclusionary and does not meet with the requirements of C.C.P §437c(d). (See *Sesma, supra.*)

**Court's Ruling on Objection 9:**

Sustained: \_\_\_\_\_

Overruled: \_\_\_\_\_

Dated: May \_\_\_\_\_, 2013

WYLIE McBRIDE,  
PLATTEN & RENNER



JOHN McBRIDE

Attorneys for Plaintiffs and Cross-Defendants Robert Sapien,  
Mary Kathleen McCarthy, Than Ho, Randy Sekany,  
Ken Heredia, Teresa Harris, Jon Reger, Moses Serrano, John Mukhar,  
Dale Dapp, James Atkins, William Buffington and Kirk Pennington

I:\0230\72256\pnd\objections gurza dec

Received  
MAY 06 2013  
meyers / nave

**WYLIE, MCBRIDE,  
PLATTEN & RENNERT**

*A Law Corporation*

2125 CANTOAS GARDEN AVENUE, SUITE 120  
SAN JOSE, CALIFORNIA 95125

Linda M. Ross, Esq.  
Arthur A. Hartinger, Esq.  
Meyers, Nave, Riback, Silver & Wilson  
555 12<sup>th</sup> Street, Suite 1500  
Oakland, CA 94607

meyers | nave

MAY 06 2013

RECEIVED